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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 PADDED SPACES LLC,
11 Plaintiff,
12 v.
13 DAVID WEISS, et al.,
14 Defendants.

CASE NO. C21-0751JLR

ORDER GRANTING MOTION
FOR ALTERNATIVE SERVICE

15 **I. INTRODUCTION**

16 Before the court is Plaintiff Padded Spaces LLC's ("Padded Spaces") motion for
17 alternative service of process pursuant to Federal Rule of Civil Procedure 4(f)(3). (Mot.
18 (Dkt. # 12).) Padded Spaces seeks leave to serve Defendant Yalong Technology Co. Ltd.
19 ("Yalong") by email and via the messaging system available on Yalong's Amazon.com
20 storefronts. (*See generally id.*) The court has considered the motion, the materials

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submitted with the motion, the balance of the record, and the governing law.¹ Being fully advised, the court GRANTS Padded Spaces's motion for alternative service.

II. BACKGROUND

On June 8, 2021, Padded Spaces filed its initial complaint in this action, alleging claims for patent infringement, trade dress infringement, and unfair competition against Yalong and three other defendants.² (Compl. (Dkt. # 1).) It filed an amended complaint on August 6, 2021. (Am. Compl. (Dkt. # 5).) Padded Spaces alleges that Yalong, a Chinese company, has infringed its patent and trade dress rights in the design of its Prop'n' Go Slip lap desk, which provides "more comfortable experiences for users, for example, when using a tablet, laptop, or other device, or reading a book or magazine, in bed or on a couch." (Mot. at 2-3 (citing Am. Compl. ¶¶ 14-24).) It alleges that Yalong sells its infringing product on Amazon.com under the aliases "gYaron" and "zhanwang." (*Id.* at 3 (citing Am. Compl. ¶¶ 8, 23-26, 34-39).) The "gYaron" seller profile on Amazon lists a physical address for Yalong in Dongguan City, Guangdong Province, China. (Shewmake Decl. (Dkt. # 13) ¶ 3, Ex. A (screenshot of "gYaron" seller profile).)

On September 3, 2021, Padded Spaces filed a notice that it had, in an effort to serve Yalong, submitted a service request to the Central Authority designated by the People's Republic of China pursuant to the Hague Convention on the Service Abroad of

¹ Although this motion is noted for consideration on May 13, 2022, Yalong has not appeared in this case and the court assumes it will not file a response. (*See generally* Dkt.) Therefore, the court sees no reason to delay issuing this order.

² Padded Spaces dismissed its claims against all Defendants except Yalong on September 16, 2021. (*See* Not. of Voluntary Dismissal (Dkt. # 8).)

1 Judicial and Extrajudicial Documents (“Hague Convention”). (Not. of Service Req. (Dkt.
2 # 7).) At the time, service on Yalong through the Hague Convention was expected to
3 take 18-26 weeks. (*See id.*) On October 26, 2021, the court directed Padded Spaces to
4 file status reports every 90 days regarding its efforts to serve Yalong. (10/26/21 Order
5 (Dkt. # 9).)

6 On December 1, 2021, Padded Spaces informed the court that its service request
7 had been transferred to the Supreme People’s Court in the People’s Republic of China for
8 further processing. (12/1/21 Report (Dkt. # 10).) On March 1, 2022, Padded Spaces
9 informed the court that its attempt to serve Yalong via the Hague Convention was not
10 successful. (3/1/22 Report (Dkt. # 11).) The formal affidavit and certificate of
11 non-service provided by the Chinese Central Authority stated that the documents could
12 not be served because the officials designated to effect service could not find any
13 information about Yalong despite searching multiple databases and making inquiries to
14 local officials and because the address (which Yalong had provided on its “gYaron”
15 seller profile) was “not specific enough.” (Shewmake Decl. ¶ 5, Ex. B (translated copy
16 of the Chinese Central Authority’s certificate of non-service).)

17 Padded Spaces and its counsel have since unsuccessfully attempted to identify an
18 alternative physical address for Yalong. (*Id.* ¶ 6.) They also have not identified any
19 channels other than Amazon.com through which Yalong does business. (*Id.* ¶ 7.) They
20 have, however, identified two possible means of contacting Yalong: through messages
21 sent via Yalong’s Amazon.com storefronts and through the email addresses associated
22 with its Amazon.com seller profiles. First, counsel for Padded Spaces sent a message

1 about this lawsuit and a copy of the amended complaint to Yalong using the “Ask a
 2 Question” button on the “gYaron” seller profile. (*Id.* ¶¶ 10-11, Exs. D-E (screenshots of
 3 Amazon.com’s messaging system indicating that the message was successfully sent).)
 4 Although counsel did not receive a response to his message, he also did not receive any
 5 indication that the message was not delivered to or received by Yalong. (*Id.* ¶ 12.)
 6 Second, counsel sent an email about this lawsuit and a copy of the amended complaint to
 7 the email address associated with the “zhanwang” profile: 3034240135@qq.com. (*Id.*
 8 ¶ 13, Ex. F (email from Amazon.com providing the “zhanwang” email address); *id.* ¶ 14,
 9 Ex. G (email from counsel to 3034240135@qq.com).) Again, although counsel did not
 10 receive a response to his message, he did receive confirmation that delivery to the email
 11 address was complete and did not receive any indication that the message was not
 12 delivered or received. (*Id.* ¶ 15, Ex. H (email confirmation message).)

13 III. ANALYSIS

14 Federal Rule of Civil Procedure 4(h) governs service of process on foreign
 15 businesses. Fed. R. Civ. P. 4(h). Rule 4(h)(2) authorizes service of process on a foreign
 16 corporation “at a place not within any judicial district of the United States, in any manner
 17 prescribed by Rule 4(f) for serving an individual, except personal delivery under
 18 (f)(2)(C)(i).” Fed. R. Civ. P. 4(h)(2). Rules 4(f)(1) and 4(f)(2) provide specific methods
 19 of serving process on individuals in foreign countries.³ *See* Fed. R. Civ. P. 4(f)(1)-(2).

21 ³ Rule 4(f)(1) allows service of process “by any internationally agreed means of service
 22 that is reasonably calculated to give notice, such as those authorized by the [Hague
 Convention].” Fed. R. Civ. P. 4(f)(1). Rule 4(f)(2) allows service of process, “if there is no
 internationally agreed means,” by a method that is reasonably calculated to give notice as

1 Rule 4(f)(3) allows international service by a method not listed in Rule 4(f)(1) or (2) if
 2 the method is “not prohibited by international agreement, as the court orders.” Fed. R.
 3 Civ. P. 4(f)(3); *see also Rio Properties, Inc. v. Rio Int’l Interlink*, 284 F.3d 1007, 1014-15
 4 (9th Cir. 2002). As long as the method of service is “court-directed and not prohibited by
 5 an international agreement, service of process ordered under Rule 4(f)(3) may be
 6 accomplished in contravention of the laws of the foreign country.” *Id.* at 1014.

7 “Even if facially permitted by Rule 4(f)(3),” however, “a method of service of
 8 process must also comport with constitutional notions of due process.” *Id.* at 1016.
 9 Thus, the “method of service crafted by the district court must be ‘reasonably calculated,
 10 under all the circumstances, to apprise interested parties of the pendency of the action and
 11 afford them an opportunity to present their objections.’” *Id.* at 1016-17 (quoting *Mullane*
 12 *v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). Thus, the court proceeds
 13 to analyze (1) whether service of process by the methods proposed by Padded Spaces is
 14 permitted under Rule 4(f)(3) and (2) whether those methods comport with due process.

15 **A. Rule 4(f)(3)**

16 First, the court must determine whether service of process on defendants in China
 17 by email and via the Amazon.com storefront messaging system is “prohibited by
 18 international agreement.” Fed. R. Civ. P. 4(f)(3). The court concludes that these methods

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 22 prescribed by the foreign country’s law for service; directed by a foreign authority; or, unless
 prohibited by the country’s law, by delivering the summons and complaint to the defendant
 personally or using any form of mail that the clerk addresses and sends, requiring a signed
 receipt. Fed. R. Civ. P. 4(f)(2).

1 of service are not prohibited by international agreement and are therefore permitted by
2 Rule 4(f)(3).

3 China is a signatory to the Hague Convention. *See* Contracting Parties, Hague
4 Conference on Private International Law, [https://www.hcch.net/en/instruments/](https://www.hcch.net/en/instruments/conventions/status-table/?cid=17)
5 [conventions/status-table/?cid=17](https://www.hcch.net/en/instruments/conventions/status-table/?cid=17) (last visited May 3, 2022). At the outset, it is
6 questionable whether the Hague Convention applies to the facts of this case. The Hague
7 Convention expressly does not apply where the address of the foreign defendant is
8 unknown. *See* Hague Convention, art. 1 (“This Convention shall not apply where the
9 address of the person to be served with the document is not known.”); *see also*
10 *Amazon.com v. Tian*, No. C21-0159TL, 2022 WL 486267, at *3 (W.D. Wash. Feb. 17,
11 2022) (citing cases that authorized service by email where the defendants’ physical
12 addresses were unknown). Thus, here, where the address Yalong provided on its
13 “gYaron” seller profile is apparently false or inadequate (*see* Shewmake Decl. Ex. B), the
14 Hague Convention arguably does not apply in the first instance and therefore does not
15 prohibit service of process by the methods Padded Spaces now proposes.

16 Even if the Hague Convention applies, the court concludes that service by email
17 and via the Amazon.com storefront messaging system are permissible methods of service
18 under Rule 4(f)(3). Service through a country’s Central Authority, as Padded Spaces
19 attempted here, is the principal means of service under the Hague Convention. *See*
20 *Rubies Costume Co. v. Yiwu Hua Hao Toys Co., Ltd.*, No. C18-1530RAJ, 2019 WL
21 6310564, at *2 (W.D. Wash. Nov. 25, 2019). Article 10 of the Hague Convention,
22 however, “preserves the ability of parties to effect service through means other than a

1 recipient-nation’s Central Authority as long as the recipient-nation has not objected to the
2 specific alternative means of service used.” *Id.* (citing Hague Convention, art. 10).
3 China has expressly rejected service through the means enumerated in Article 10,
4 including service through postal channels and through its judicial officers. *Id.*; *see*
5 Declaration/Reservation/Notification, [https://www.hcch.net/en/instruments/conventions/](https://www.hcch.net/en/instruments/conventions/status-table/notifications/?csid=393&disp=resdn)
6 [status-table/notifications/?csid=393&disp=resdn](https://www.hcch.net/en/instruments/conventions/status-table/notifications/?csid=393&disp=resdn) (last visited May 3, 2022) (stating the
7 People’s Republic of China “oppose[s] the service of documents in the territory of the
8 People’s Republic of China by the methods provided by Article 10 of the Convention”).
9 Article 10, however, does not mention service by email or other electronic
10 communications, and multiple courts in the Ninth Circuit have concluded that China’s
11 objection to Article 10 does not prohibit alternative service of process by electronic
12 communications to defendants located in China. *See Rubies Costume Co.*, 2019 WL
13 6310564, at *3 (citing cases authorizing service on defendants located in China via email
14 and/or online messaging systems); *id.* at *4 (authorizing service of process on defendants
15 located in China via email and Amazon seller account storefronts). Consistent with these
16 cases, the court concludes that the Hague Convention and Rule 4(f)(3) do not prohibit
17 service of process on Yalong by email and via Amazon.com’s storefront messaging
18 system.

19 **B. Due Process**

20 Second, the court considers whether service of process on Yalong by email and via
21 Amazon.com’s storefront messaging system comports with constitutional due process—
22 that is, whether these methods are “reasonably calculated, under all the circumstances, to

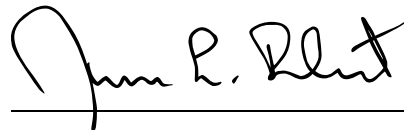
1 apprise interested parties of the pendency of the action and afford them an opportunity to
2 present their objections.” *Mullane*, 339 U.S. at 314. The court concludes that Padded
3 Spaces’s proposed methods of service satisfy due process. Based on counsel’s
4 investigation, Yalong “appears to conduct the vast majority, if not all, of its business
5 online” through its Amazon.com storefronts. (Shewmake Decl. ¶ 7.) Thus, it can be
6 reasonably inferred that Yalong uses the communication methods associated with those
7 storefronts to conduct its online business. Amazon.com provided the
8 3034240135@qq.com email address associated with Yalong’s “zhanwang” seller profile
9 address to Padded Spaces in response to an inquiry. (*Id.* ¶ 13.) Counsel for Padded
10 Spaces emailed this address and received confirmation that delivery of the message was
11 complete. (*Id.* ¶¶ 14-15.) Customers with questions about Yalong’s products use the
12 “Ask a Question” button on Yalong’s Amazon.com seller profile page to contact Yalong
13 through Amazon’s storefront messaging system. (*Id.* ¶¶ 8-9.) Counsel messaged Yalong
14 through the “gYaron” seller page and received a confirmation that the message was sent.
15 (*Id.* ¶¶ 10-12.) Based on these facts, the court is satisfied, under the circumstances, that
16 service by email to the 3034240135@qq.com email address and via message sent to the
17 “gYaron” seller profile using Amazon.com’s storefront messaging system is “reasonably
18 calculated” to apprise Yalong of this action. Accordingly, the court GRANTS Padded
19 Spaces’s motion for alternative service.

20 IV. CONCLUSION

21 For the foregoing reasons, the court GRANTS Padded Spaces’s motion for
22 alternative service (Dkt. # 12). Pursuant to Federal Rule of Civil Procedure 4(f)(3), the

1 court AUTHORIZES Padded Spaces to effect service on Yalong by serving the summons
2 and first amended complaint (Dkt. # 5) upon Yalong via email to 3034240135@qq.com
3 and/or via the storefront messaging system available on the “gYaron” seller profile on
4 Amazon.com. The court further ORDERS Padded Spaces to advise the court of the
5 status of service no later than thirty (30) days after entry of this order.

6 Dated this 5th day of May, 2022.

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9 JAMES L. ROBART
10 United States District Judge
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